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EXAMINER

WILLETT, STEPHAN F

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/500,921

Applicant(s)

PESTONI, FLORIAN

Examiner

Stephan F Willett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-12, 14-18, 20-25, 27-31, 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholl et al. with Patent Number 6,145,001 in view of Gupta et al. with Patent Number 6,457,173.

1. Regarding claim(s) 1, 8, 16, 23, 30, Scholl teaches transferring a request to an intermediary, col. 6-7, lines 66-1. Scholl teaches generating a plurality of instances (requests) for each server program, col. 7, lines 2-5, 25-27, 63 via a "network access protocol", col. 7, lines 31-33. Instance, similar to object, is a broad term that refers to subclasses of object oriented code running or instance data used in the instance. Scholl teaches "the appropriate data is the collected [combined] in response to the managed network and objects", col. 7, lines 25-27 based on "the Web client request" being translated "into at least one network management request", col. 7, lines 61-63. The translated request is a subclass or instance performed by the parser/formatter or a type of an intermediary and vice versa as claimed. It is well known in the art that a single request usually results in numerous sub requests (instances) from the initial request. Scholl teaches transferring said request instances to the server, col. 7, lines 5-24. Scholl

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teaches transferring a plurality of responses to said intermediary, col. 7, lines 26-33. Scholl teaches converting said responses into one response for the client, col. 7, lines 33-40. Scholl teaches the invention in the above claim(s) except for explicitly teaching instantiating same requests. In that art, Gupta, a related data reporting system teaches “multiplexors”, col. 4, line 9 in order to send requests. Gupta specifically teaches “multiple instances of the same operation”, col. 7, lines 23-26. Further, Gupta suggests “this operation group may be issued concurrently with many different combinations of operation groups”, col. 7, lines 39-40 which will result from implementing the requests for data. The motivation to incorporate same requests insures that at least accuracy is improved. Thus, it would have been obvious to one of ordinary skill in the art to incorporate multiple same requests as taught in Gupta into the data retrieval system described in the Scholl patent because Scholl operates with multiple requests and Gupta suggests that retrieved data can be made concurrently. Therefore, by the above rationale, the above claim(s) are rejected.

2. Regarding claims 2, 11, 17, 24, Scholl teaches specifying a target list of instance requests, col. 7, lines 61-66.
3. Regarding claims 3, 12, 18, 25, 31, Scholl teaches selecting an operation to combine results, col. 6, lines 47-54, col. 7, lines 25-30.
4. Regarding claims 5-6, 10, 14, 20-21, 27-28, 33-34, Scholl teaches automatic instantiation and unaffected method as real time, col. 7, lines 54-55.
5. Regarding claims 7, 15, 22, 29, 35, Scholl teaches an instance of the client program as returning data to the client, col. 6, lines 50-51.
6. Regarding claims 9, Scholl teaches altering requests, col. 6, lines 25-28.

**Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 13, 19, 26, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholl et al. with Patent Number 6,145,001 in view of Gupta et al. with Patent Number 6,457,173 and Rogers et al. with Patent Number 6,094,655.

9. Regarding claim(s) 4, 13, 19, 26, 32, Scholl teaches transferring a request to an intermediary, col. 6-7, lines 66-1. Scholl teaches generating a plurality of instances (requests) for each server program, col. 7, lines 2-5. Scholl teaches transferring said request instances to the server, col. 7, lines 5-24. Scholl teaches transferring a plurality of responses to said intermediary, col. 7, lines 26-33. Scholl teaches converting said responses into one response for the client, col. 7, lines 33-40. Scholl teaches specifying a target list of instance requests, col. 7, lines 61-66. Scholl teaches selecting an operation to combine results, col. 6, lines 4-54. Scholl and Gupta teaches the invention in the above claim(s) except for explicitly teaching specific operations to be performed on response data. In that art, Rogers, a related data reporting system teaches "the DIS capsule has created the file containing the report results " col. 9, lines 18-19 in order to identify relevant user data. Rogers specifically teaches listing, adding, subsets, maximums, minimums and averages, col. 18, lines 60-67, col. 23, lines 44-49. Further, Rogers suggests "a capsule object, as a DIS capsule, can call other routines", col. 18, lines 445-46, 48-53

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which will result from implementing the requests for data. The motivation to incorporate diverse operations insures that a diverse array of presentation mediums are available. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various data computations as taught in Rogers into the data retrieval system described in the Scholl and Gupta patents because Scholl operates with diverse data sources and Rogers suggests that retrieved data can be reformatted into many forms. Therefore, by the above rational, the above claim(s) are rejected.

***Response to Amendment***

10. Based on the new grounds for rejection the applicants arguments are moot, thus applicants arguments are addressed above. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

11. The limited structure claimed, without more functional language, reads on the references provided.

12. Applicant suggests "by using an intermediary that creates different instances of the same request to accommodate the different instances", Paper filed 9/9/04, Page 9, lines 2-3. It is not clear what was meant . Also, the above argument is not commensurate with what is presently claimed and therefore will not be considered at this time. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

13. Applicant suggests "a system that parses the client request into [or generates] multiple different requests", Paper filed 9/9/04, Page 11, lines 19-20. Scholl does not teach that these requests must be or are "different", the applicant's position is not supported and evidence is requested to support this position. In addition, Gupta specifically teaches "multiple instances of

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the same operation”, col. 7, lines 23-26. In any event, the references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. The descriptions in the references are not obfuscated by the numerous other suggested usages of said description in the reference. In addition, implicitly, impliedly and inferentially, various types of requests are taught and language identical or verbatim is not required in an obvious rejection. Note that reasonable “inferences”, and “common sense” may be considered in formulating rejections for obviousness. Specifically, *In re Preda*, 401 F.2d 825, 159 USPQ 342, 344 (CCPA 1968) states “in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” Also, *In re Bozek*, 416 F.2d 738, 163 USPQ 545, 549 (CCPA 1969) states that obviousness may be concluded from “common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference”. Additionally, see *In re Gauerke*, 24 CCPA 725, 86 F.2d 330, 31 USPQ 330, 333 (CCPA 1936), and *In re Libby*, 45 CCPA 944, 255 F.2d 412, 118 USPQ 94, 96 (CCPA 1958), and *In re Jacoby*, 309 F.2d 738, 125 USPQ 317, 319 (CCPA 1962), and *In re Wiggins*, 488 F.2d 538, 543, 1979 USPQ 421, 424 (CCPA 1973). Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

### Conclusion

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14. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited, and note Grigsby et al. US Patent 5,802,368, col. 1, lines 16-17. The other references newly cited teach numerous other ways to instantiate a single request into multiple requests and provide a single response with regard to instances specifically, thus a close review of them is suggested.

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

2. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period, will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.


4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-0044.

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5. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

sfw

January 5, 2005

  
RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER